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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,684	11/19/2001	Corey M. Grove	DAM 557-01	5881
24211 7590 04/28/2009 US ARMY SOLDIER AND BIOLOGICAL CHEMICAL COMMAND OFFICE OF THE CHIEF COUNSEL/IP TEAM (BLDG E4435) 5183 BLACKHAWK ROAD APG, MD 21010-5424				
EXAMINER				
MENDOZA, MICHAEL G				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
04/28/2009		PAPER		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/992,684
Filing Date: November 19, 2001
Appellant(s): GROVE ET AL.

GROVE et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8 January 2009 appealing from the Office action mailed 24 June 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,817,596	GALLET	4-1989
5,191,882	VOGLIANO	3-1993
5,555,569	LANE	9-1996
6,279,172	EPPERSON et al.	8-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. 1, 3, 4, 6, 7, 10, 11, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallet 4817596 in view of Vogliano 5191882.
2. Gallet teaches a modular helmet-mask assembly which comprises: a helmet comprising an impact resistant material; a face protection assembly comprising: a face protection shell; a vision port; a flexible nose cup (see figure) comprising a breathe-through airflow assembly and a filter unit (col. 1, lines 10-13); a flexible face seal (col. 4, lines 33-37); an adjustable head harness (see figure); a transparent, impact resistant lens rotatably attached at front part of the helmet (col. 5, lines 14-22); a transparent, impact resistant lens fixed to the vision port; wherein the impact resistant lens comprises polycarbonate, polyurethane, or combination thereof (col. 5, lines 21-22); wherein the face seal and nose cup comprise an elastic material (col. 4, lines 33-37); and wherein the filter unit comprises a filter element comprising a material capable of filtering chemical vapors and biological aerosols (col. 1, lines 10-13). It should be noted that Gallet fails to specifically teach wherein the face protection shell comprises an

impact resistant material. However it would have been obvious to one of ordinary skill in the art at the time the invention was made to use impact resistant material in situations where the mask could be damaged (firefighting/police raids) to prevent breakage. It should also be noted that Gallet fails to teach the adjustable head harness is attached at a surface of the shell or the face seal which is capable of engaging the back of a user's head.

3. Vogliano teaches a apparatus with a common adjustable head harness attached at a surface of the shell or the face seal which is capable of engaging the back of a user's head. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use straps in view of Vogliano with the modular helmet-mask assembly of Gallet to allow the face protection assembly to be worn without the use of the helmet (see abstract).

4. As to claim 11, Gallet/Vogliano discloses the claimed invention except for the filter element comprises a carbon filter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a carbon filter since it was known in that carbon filters are effective for removing harmful gases.

5. Claims 2, 12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallet/Vogliano as applied to claims 1, 2, and 17 above, and further in view of Lane 5555569.

6. Gallet/Vogliano teaches the modular helmet-mask assembly of claim 1. It should be noted that Gallet/Vogliano fails to teach a position adjustable pad attached at rear part of the helmet, or a tightening adjustment knob/lever.

7. Lane teaches an assembly with a common pad and knob for securing a helmet on a wear's head (see figures). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the pad and knob for allowing adjustment of the fit of the helmet when the helmet is donned (col. 4, lines 47-56).

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gallet/Vogliano in view of Epperson et al. 6279172.

9. Gallet/Vogliano teaches the helmet-assembly of claim 1. It should be noted that Gallet/Vogliano fails to specifically teach the impact resistant shell material comprises graphite, fiberglass, or combinations thereof.

10. Epperson et al. teaches an assembly with common impact resistant material. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the graphite of Epperson et al. for its strong and lightweight properties (col. 3, lines 28-29).

(10) Response to Argument

11. The appellant argues that the system taught by Gallet and the head harness of Vogliano could not work together. The examiner disagrees. As shown in figure 8 of Vogliano, the harness has an opening 11 that is large enough to accommodate the vision port and still have a gap between the opening and the outer periphery of the port. As shown in figure 1 of Gallet, the arm 25 is attached to the fitting 26 that is on the periphery of the frame 27 of the vision port. The harness of Vogliano is fully capable of being fitted over the mask shell of Gallet without interfering with the arm 25 that

attaches the mask to the helmet. The configuration of Gallet in combination with Vogliano would allow helmet-mask assembly of Gallet to be worn without the use of the helmet (see abstract). A helmet would be able to be placed on top of the straps of Vogliano if the head of the user needs to be protected.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Mendoza

/Michael G. Mendoza/

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